

MULTIMEDIA



UNIVERSITY

STUDENT IDENTIFICATION NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

T2, 2018/2019

BIR 7104 – INDUSTRIAL RELATIONS
(MBA Full Time)

30th JANUARY 2019
9.00 a.m – 12.00 p.m
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. This question paper consists of **FOUR (4)** pages (including the cover page).
2. Answer **ALL** questions. The marks distributions are given in parentheses.
3. Write all your answers in the **Answer Booklet** provided.

QUESTION 1

Compare and contrast the cases of American International Assurance Co Ltd v. Dato' Lam Peng Chong & Ors [1999] and Nova Charm Sdn. Bhd. v Ooi Hock Huat [2002]

Set out the facts and explain in detail the legal principles in these two cases and their significance.

(25 Marks)

QUESTION 2

Freddie, Brian, John and Roger are four mechanics with Forster Workshops Sdn Bhd ("the Company"). Paul is their supervisor. The four mechanics were appointed through a Letter of Appointment (the "LOA") by the Company. The LOA stated as follows:

We are pleased to offer you employment with our establishment as apprentice mechanics with a starting salary of RM 1000.00 per month You will be on probation for three months. At the end of the probationary period, if the Company is satisfied with your performance, you will be confirmed as Grade C mechanics with a salary of RM2000.00 thereafter.

If you accept our offer, kindly sign this letter and return it to our Human Resources Department together with a letter of reference and your Medical Report.

Freddie, Brian, John and Roger accepted the Company's offer by signing the letter and furnishing the Company with medical reports and references as requested. At the end of the probationary period of three months, they were confirmed as mechanics.

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One year later, Paul informed them that they have to sit for examinations in order to continue with their employment with the Company. The four mechanics sat for the examinations but they failed. They were given an opportunity to resit the examinations. Unfortunately, they failed the resits as well. Paul informed the mechanics that they are hereby terminated from the employment of the Company. It later transpired that the four were terminated due to their trade union activities.

Paul has been with the Company for 30 years. His terms and conditions of work are set out in the contract of employment between him and the Company. There was no mention of retirement age in the said contract. On his 60th birthday, Paul receives a letter from the Company, stating that as he has reached the retirement age of 60, the Company is hereby terminating his contract of employment. Advise Freddie, Brian, John, Roger and Paul.

(25 Marks)

QUESTION 3

Under the Malaysian industrial law, recognition of a union as a representative union (sole bargaining agent for a bargaining unit) is to be accorded to it by the employer. This recognition by the employer gives the union the right of appearance before him to bargain collectively on the terms and conditions of employment on behalf of ALL his employees who are eligible to become members of the union, regardless of whether or not they are currently members of the union claiming recognition.

V. Anantharaman *Union Recognition: A Minefield in Malaysian Industrial Relations*

Discuss the above statement with regards to union recognition. Set out the eligibility for the union to obtain recognition and the possible responses available to an Employer when faced with a claim for recognition. What is the recourse available to the Union should its claim for recognition is not successful?

(25 Marks)

Continued.....

QUESTION 4

Explain in detail the concept of constructive dismissal. You must set out its definition and the elements that make up constructive dismissal. Your answer must be supported with cases, with detailed explanation of the cases you rely on.

(25 Marks)

End of Paper

